

REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

After entry of the foregoing amendment, Claims 1-8 remain pending in the present application. No new matter has been added.

By way of summary, the Official Action presents the following issues: Claims 1-8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nakayama et al. (U.S. Patent No. 7,117,253, hereinafter "Nakayama") in view of Sakata (U.S. Patent Publication 2004/0064507, hereinafter "Sakata").

REJECTION UNDER 35 U.S.C. § 103

The Official Action has rejected Claims 1-8 under 35 U.S.C. § 103 as being unpatentable over Nakayama in view of Sakata. The Official Action contends that the combination of cited references describes or suggests all of the Applicant's claimed features. Applicant respectfully traverses the rejection.

Applicant's Claim 1 recites, *inter alia*, a content acquisition method, including:

... a division position determination step of
determining division start positions and division end positions specifying division parts of said content data to request said content data in divided form from said plurality of content provision apparatus, **based on the number of pieces of said address information and said data size information received by said information reception step;**

a division part request information transmission step of
transmitting division part request information including content identification information of said content data, and said division start positions and division end positions of said division parts of said content data, such that each said division part is requested from different said content provision apparatus; . . . (emphasis added)

Nakayama describes a client server arrangement in which information is transferred from a server side to a client side. In applying this description to the claims of record, the Office has identified column 4, lines 16-24 of this reference to correspond to both of the claimed features listed above. The cited portion of the Nakayama reference describes that a WWW browser is utilized to browse HTTP contents. This passage also explains that streaming content is content which is continually transferred from one device to another, and that streaming data is divided into "clips".

The Office Action is completely silent with respect to any reasoned rationale as to how the cited art relates to the above-identified claim features.

Simply stated, the claims require that division start positions and division end positions are **determined** for specifying division parts of content data such that the content data can be requested, in divided fashion, from a plurality of **DIFFERENT** content position apparatuses. The division is based on a number of pieces of address information and data size information. The start positions and end positions of the content data is then **TRANSMITTED** as division part request information, including content identification information of the content data, such that each division part is requested from a different content division apparatus. The obtained divided content is then combined upon reception.

At page 24 of the Official Action under the "Response to Arguments" section the Office notes that:

Examiner's response: In paragraph [0078], Sakata explicitly recites in case the contents to be sent per terminal is transmitted via a broadcasting system and the broadcast schedule and the contents are acquired via a communications system, address information used to specify the contents. At the terminal, contents are acquired in accordance with a broadcast schedule and the acquired contents are accumulated in a cache together with the corresponding URLs. Sakata further discloses in claim 2, an information provision system according to claim 1, wherein said individual receive information includes address information used in case said content is acquired via a communications system. Sakata further states in claim 8, an information provision system according to claim 6 or

7, wherein said content provider accumulates said created content onto a server on a network, that said content sending coordinator includes the address information of said content on the network in said information to be presented to a terminal, and that said terminal manages a content received via data broadcasts in linkage with said address information. In claim 9, Sakata further discloses, an information provision system according to claim 8, wherein said terminal acquires a content from said server on a network based on said address information, which content the terminal failed to receive via data broadcasts. In claim 12, Sakata further discloses, an information provision system that provides a content destined for a terminal, said content created by a content provider, said information provision system comprising: a broadcast station for broadcasting said content via data broadcasts, a data communication server agent for accumulating said content onto a server on a network as well as setting access information to said server, and a content sending coordinator for requesting broadcast or accumulation onto a server of a content created by said content provider and presenting information necessary for receiving said content via broadcasts or information necessary for accessing said server to a terminal via a communication circuit, and that said **content sending coordinator considers the content transmission cost, transmission time, traffic on the transmission path, and transmission data size before selecting said broadcast station or data communication server agent.** (emphasis in original)

It is unclear what the above-referenced response has to do with the current outstanding rejections. Simply stated, to the extent that the Office is intending to base the present rejection on reference to a patent claim, this is clearly improper. The Federal Circuit has characterized analysis of prior art patent claims with respect to the patentability of an Application as “a plainly indefensible line of reasoning” (In Re Benno, 226 U.S.P.Q. 683, 686, Fed. Cir. 1985) and further stated that:

The scope of a patent’s claim determines what infringes the patent; it is no measure of what it discloses. A patent discloses only that which it describes, whether specifically, or in general terms, so as to convey intelligence to one capable of understanding (*See Benno* at 686) (emphasis added)).

Furthermore, the Office simply repeats the citations to Nakayama in support of the outstanding rejection, identifying column 4, lines 16-24 and column 13, lines 29-43. While it is clear that the Office is taking the position that “clips” are a form of divided data, there is absolutely no reference or articulable rationale as to how these portions of Nakayama can be

said to divide content data into start positions and end positions **BASED ON** a number of pieces of address information and data size information. Additionally, there is no explanation or articulable rationale as to how Nakayama **TRANSMITS** such division start positions and division end positions such that each divided part is requested from a **different content division apparatus** as required by the independent claims.

Clearly, Nakayama does not disclose or suggest **DETERMINING** division start positions or division end positions of content data based upon address information and data size. Additionally, Nakayama does not disclose or suggest transmitting such information such that each division part is requested from a different content provision apparatus and combined upon reception as claimed.¹

As Sakata has not been relied upon for describing any of the aforementioned claimed features, nor does Sakata remedy any of these deficiencies as discussed above, Applicant respectfully requests that the rejection of Claims 1-8 under 35 U.S.C. § 103 be withdrawn.

¹ To the extent of data this rejection is maintained in a further action, Applicants respectfully request that the Office provide a more reasoned explanation as to this rejection such that the Applicants can understand this position.

CONCLUSION


Should the Examiner continue to disagree with the above distinctions, Applicants respectfully request that the Examiner provide an explanation via Advisory Action pursuant to MPEP § 714.13 specifically rebutting the points raised herein for purposes of facilitating the appeal process.

Please note in accordance with the discussion herein, should the rejections in the Official Action of October 17, 2008 be maintained, Applicants intend to request a Pre-Brief Appeal Conferences.

Accordingly, the outstanding rejection is traversed and the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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